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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/774,664 | 02/09/2004 | Charles J. Winslow | KLYC-01086US1 | 9446 |
| 7590 | 11/02/2006 | | EXAMINER | |
| Sheldon R. Meyer FLIESLER MEYER LLP Fourth Floor Four Embarcadero Center San Francisco, CA 94111-4156 | | | SWIGER III, JAMES L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3733 | |
| DATE MAILED: 11/02/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/774,664 | WINSLOW ET AL. | |
| | Examiner | Art Unit | |
| | James L. Swiger | 3733 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 July 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-49 is/are pending in the application.
 - 4a) Of the above claim(s) 29-49 is/are withdrawn from consideration.
- 5) Claim(s) 20-28 is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 February 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>See Continuation Sheet</u> | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :6/24/04; 12/2/04; 7/27/04; 2/9/04; 12/20/04; .

DETAILED ACTION***Election/Restrictions***

Applicant's election without traverse of Invention I (claims 1-28) in the reply filed on 7/24/2006 is acknowledged.

Claims 29-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7/24/2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 6-9, and 12-14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Santilli (US Patent 6,364,883) in view of Duff (US Patent 4,611,582) and Zucherman et al. (US Publication 2002 Santilli disclose a spinal device having a first plate and a second plate (see fig. 2), and wherein the plates include at least a first and second slot (see Fig. 1), and wherein the slots are capable of positioning a pin as needed. Also, the longitudinal nature of the slots allows a pin to move along at least a portion of the length of the first and second plates, and wherein at least a portion of the length of a plate could be defined by a slot.

Santilli discloses the claimed invention except for at least an adjustable grip for gripping the spinous processes and a pin. Duff discloses adjustable grips for the spinous processes (20) that can adjust relative to securing the vertebrae (Col. 3, lines 10-30), and a pin portion (58) that would be able to connect through the bores of the plates of Santilli and provide relative positioning and is considered at least substantially perpendicular. It may also be adjusted within the elongate slots. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Santilli having at least an adjustable grip to grip the spine in view of Duff to better secure the device in use.

Santilli discloses the claimed invention except for a spacer. Zucherman et al. disclose a spacer (3132) that aids in spinal fusion of the device and positioning the device relative to the spinal processes (see pars 0028 and 0029). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Santilli having at least the spacer of Zucherman et al. to better secure the device relative to the spinal processes.

Claims 10-11, and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Santilli '883, Duff '582 and Zucherman et al. '039 as applied to claim 9 above, and further in view of Mathews (US Patent 5,171,279). The combination of Santilli '883, Duff '582 and Zucherman et al. '039 disclose the claimed invention except for the plate having a plurality of lobes or knurls. Mathews discloses a plate that has around a slot a plurality of lobes or knurls that helps secure the screws relative to the plate for securing purposes (Col. 8, lines 25-50). It would have been

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obvious to one having ordinary skill in the art at the time the invention was made to construct the device of the combination of Santilli '883, Duff '582 and Zucherman et al. '039 having at least lobes or knurls in view of Mathews to better secure the screws relative to the plate.

Claims 5, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Santilli '883, Duff '582 and Zucherman et al. '039. The combination of Santilli '883, Duff '582 and Zucherman et al. '039 disclose the claimed invention except for the shape of the spacer being elliptical. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the spacer having an elliptical shape to better fit between the spinous processes of the combination of Santilli '883, Duff '582 and Zucherman et al. '039, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of securing a spinal system. In re Dailey and Eilers, 149 USPQ 47 (1966).

Allowable Subject Matter

Claims 20-28 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See Pto-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-

5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLS

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER